

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

UNITED STATES OF AMERICA) CAUSE NO. 3:14-CR-014-P
(
vs.)
(APRIL 24, 2014
) DALLAS, TEXAS
TROY E. POWELL (10:00 A.M.

BENCH TRIAL

BEFORE THE HONORABLE JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

FOR THE GOVERNMENT: UNITED STATES ATTORNEY'S OFFICE
1205 TEXAS AVENUE, 7TH FLOOR
LUBBOCK, TEXAS 79401
(806) 472-7351
BY: MR. STEVE SUCSY
MS. DENISE WILLIAMS

FOR THE DEFENDANT: PROPST LAW FIRM, PC
P.O. BOX 3717
ABILENE, TEXAS 79604
(325) 437-9977
BY: MR. JEFFREY PROPST

OFFICIAL COURT REPORTER: SHAWN M. McROBERTS, RMR, CRR
1100 COMMERCE STREET, RM. 1654
DALLAS, TEXAS 75242
(214) 753-2349

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1 THE COURT: Be seated.

2 Call this case for trial, United States versus Powell.

3 Mr. Sucsy, the Government is ready?

4 MR. SUCSY: The Government is ready.

5 MR. PROPST: The Defendant is ready.

6 THE COURT: Mr. Propst, you filed earlier this month
7 the waiver of the jury trial. Did we discuss this at the
8 pretrial conference?

9 MR. PROPST: Yes.

10 THE COURT: All right. So we are ready to go.

11 Mr. Sucsy, if you want to call your first witness.

12 MR. SUCSY: Your Honor, so I don't forget, we have a
13 stipulation of some evidence that we have here that we would
14 like to present to the Court in writing.

15 THE COURT: All right.

16 MR. SUCSY: And if I could, it is fairly short. I
17 would just like to read it.

18 THE COURT: Yes, sir. Go ahead.

19 MR. SUCSY: "The parties in the above-referenced
20 case hereby agree and stipulate to the following facts, and
21 agree that such facts are hereby established without the need
22 for further support, testimony from witnesses, exhibits,
23 documentary evidence, or any other proof or certification.

24 "Defendant Troy E. Powell did not register as a sex
25 offender or update such a registration in Texas, or any other

1 place, with respect to residing in the Northern District of
2 Texas in 2013 or 2014."

3 THE COURT: All right.

4 MR. SUCSY: And the United States would call Chance
5 Ferguson.

6 (Whereupon, the oath was administered by the Court.)

7 CHANCE FERGUSON,

8 Testified on direct examination by Mr. Sucsy as follows:

9 Q. Could you state your name, please?

10 A. Chance Ferguson.

11 Q. And how are you employed?

12 A. Deputy United States Marshal in the Northern District of
13 Texas, Abilene Division.

14 Q. And how long have you been in that job?

15 A. I have been a Deputy United States Marshal for 11 years
16 now, and I have been in Abilene for six.

17 Q. All right. You know we are here to try the case of Troy
18 E. Powell. Have you investigated a criminal case on that
19 individual?

20 A. Yes, sir, I have.

21 Q. And can you identify if that person is in the courtroom
22 at this time?

23 A. Yes, sir. Defendant Powell is sitting in the orange
24 jumpsuit immediately to the right of his counsel at the
25 Defendant's table.

1 Q. And what was the nature of your investigation of
2 Mr. Powell?

3 A. He was in violation of the Adam Walsh Act for failure to
4 register as a sex offender.

5 Q. Is that also in this case indicted as a violation of 18
6 U.S.C. 2250?

7 A. Yes, sir. That is the statute.

8 Q. All right. Were you able to initially find Mr. Powell or
9 search for him in records?

10 A. Yes, sir.

11 Q. All right. Where did you -- What did you do to initiate
12 your investigation?

13 A. The first part of my investigation would be to ascertain
14 whether Mr. Powell had registered either in Abilene, Taylor
15 County, or in the state of Texas, and that would trigger
16 whether I proceeded with the investigation or did not proceed
17 with the investigation.

18 Q. All right. And I take it you didn't find any indication
19 he had registered in Texas.

20 A. Correct. There was no indication that Mr. Powell had
21 registered with any of the local authorities or the state of
22 Texas, and I did find in my search where he had registered in
23 Illinois.

24 Q. In the state of Illinois?

25 A. Yes, sir.

1 Q. All right. Did you -- Where did you start looking for
2 him? What gave you the impression he might be in Texas
3 without registering?

4 A. I believe it was during the Thanksgiving break, I was
5 actually on leave, and was contacted by Gary Heslup with the
6 Abilene Police Department Sex Offender Registration Unit that
7 said that they had a call from a school resource officer at
8 Abilene High that an outcry to CPS had been made that a sex
9 offender by the name of Troy Powell was living on Minter Lane
10 and had not registered in the city limits of Abilene.

11 Q. All right. And did you subsequently find Mr. Powell?

12 A. Yes, sir, I did.

13 Q. All right. Where did you find him?

14 A. At the time that I found Mr. Powell, he was living out in
15 the Lemons Gap area. It is actually a Tuscola residence, but
16 it is south of Abilene, in a house that he had purchased.

17 Q. And that is in Taylor County the Northern District of
18 Texas?

19 A. Yes, sir, it is.

20 Q. And what did you do with him when you found him?

21 A. At the time that I found him, you know, I asked him if he
22 knew why I was there, and I was there for him failing to
23 register as a sex offender, and at that time he stated that it
24 had been over ten years and that he did not need to register.

25 That kind of -- When we arrested him, it was late in the

1 evening and I was very tired, and it kind of made me pause.
2 So I told him that at that time he was not under arrest, but
3 he was being detained, and I made some phone calls just to
4 verify that it indeed was a trigger of the Adam Walsh Act,
5 which I did verify at that point, and we put him in custody.

6 Q. All right. Did you after that have occasion to take a
7 written statement from him?

8 A. Yes, sir, I did.

9 Q. And I will direct your attention to Government's Exhibit
10 No. 4 and ask if you can identify what that is.

11 A. Yes, sir. It is the interview that I conducted with
12 Mr. Powell.

13 Q. All right. And that is a fairly short statement. What
14 does it have, five different questions you asked him?

15 A. Yes, sir.

16 Q. And where did that occur?

17 A. That occurred in my office when we brought him in for
18 processing.

19 Q. All right. And did you advise him of his *Miranda*
20 warnings and his rights before asking him these questions and
21 having him sign it?

22 A. Yes, sir, I did.

23 Q. All right. And he agreed to answer the questions?

24 A. Yes, sir.

25 Q. All right. Let's go over the --

1 MR. SUCSY: The Government would offer Government's
2 Exhibit No. 4 at this time.

3 THE COURT: Counsel?

4 MR. PROPST: Your Honor, if I may be permitted to
5 question the witness about the voluntariness of his statement
6 prior to it being admitted.

7 THE COURT: I will conditionally admit it subject to
8 your cross examination of the witness.

9 MR. PROPST: Thank you.

10 Q. (BY MR. SUCSY) All right. There are five questions that
11 you asked him.

12 A. Yes, sir.

13 Q. Let's go over those. The first one deals with when he --
14 You asked him when he arrived in Texas. And what did he tell
15 you?

16 A. He said that it was roughly the first or second week of
17 November, and while I was writing it he said it was the second
18 week of -- I am sorry. Of December. And so I had marked out
19 first and put second week of December.

20 Q. All right. So he told you it was the second week of
21 December?

22 A. Yes, sir.

23 Q. And did you talk to some other people in the course of
24 your investigation?

25 A. Yes, sir.

1 Q. And was that consistent with what you learned from other
2 people?

3 A. Most of the witnesses that I talked to thought that it
4 was actually the end of November when he got there, and that
5 is one reason I asked this question--to try to establish
6 exactly when it was.

7 Q. All right. And the second question covers whether
8 Mr. Powell resided -- or where he resided after arriving in
9 Texas. And what did he tell you about that?

10 A. He said that he lived in his truck, that he lived in a
11 hotel, he lived at 2642 Minter Lane he lived at Nick's house
12 in Clyde, and then moved to 326 County Road 606 in Tuscola.

13 Q. All right. What is that -- Can you describe the place he
14 said he moved in Tuscola?

15 A. It was actually an old church at one time, and he was
16 renovating it into a house.

17 Q. Okay. And he told you he had moved there, and is that
18 the same place where you testified that you found him when you
19 went to look for him?

20 A. Yes, sir.

21 Q. And is that -- It is not in the city limits of Abilene?

22 A. Correct. It is in the county.

23 Q. And is it remote, or how would you describe the area?

24 A. I would describe it as rural. There are some neighbors
25 out there that -- but it was on a little bit of acreage.

1 Q. All right. And the third question covers whether
2 Mr. Powell had obtained or was employed in Texas or in this
3 area. What did he tell you?

4 A. He said no, that he was not employed at the time, but he
5 had planned to work at USG, United States Gypsum plant in
6 Sweetwater, Texas, and if he was released that he would go to
7 work there.

8 Q. All right. So he did indicate that he was planning on
9 working here in this area?

10 A. Yes, sir.

11 Q. And what does that tell you about his intent to stay or
12 reside in this area?

13 A. I took that to mean that he was going to live here,
14 because it would have been a far drive from Illinois to
15 Sweetwater, Texas.

16 MR. PROPST: I will object to speculation.

17 THE COURT: Overruled.

18 Q. (BY MR. SUCSY) The fourth question was whether he was
19 aware of his duty to register in Texas. What was his answer
20 to that?

21 A. He answered no.

22 Q. And then the last one was -- Well, let's say -- Were you
23 aware that one or more documents had been given to him from
24 the state of Illinois telling him that if he moved to another
25 state that he should check with local law enforcement to see

1 if he had a duty to register?

2 A. Yes, sir.

3 Q. And as a result, did you ask him in that fifth question
4 what he had done to determine his duty to register when he
5 came here?

6 A. Yes, sir. That is correct. On multiple documents it
7 advises him if he moves to another state it is his
8 responsibility to check with local law enforcement as to his
9 duty to register, and when I asked him if he had contacted
10 local law enforcement upon entering the state of Texas, he
11 replied no, that he went online and researched it himself, and
12 was under the impression he did not have to register.

13 Q. All right. So he said he did his own research on that,
14 even though he had been advised to, instead, check with local
15 law enforcement.

16 A. Correct.

17 Q. In your first conversation with him, did Mr. Powell --
18 did he make a spontaneous statement to you about -- I think
19 you have already gone into it a little bit. When you told him
20 what you were detaining him for, what was his explanation as
21 to why he said that he wasn't -- shouldn't be detained or
22 arrested?

23 A. It was the same as that last question--that he no longer
24 had to register in the state of Illinois because it was just a
25 ten-year duty to register in the state of Illinois so he no

1 longer had to, so he got online when he came to Texas and
2 researched it and found that he did not have to.

3 Q. Did he deny being convicted of a sex offense at any time
4 to you?

5 A. No, sir, he never made that statement.

6 Q. All right. I will now direct your attention to
7 Government Exhibit No. 1, 2, and 3, and I will ask if you can
8 identify what they are.

9 A. Yes, sir. Government Exhibit No. 1 is the plea for
10 Fremont County through the state of Colorado.

11 Q. Is that entitled an information?

12 A. Yes, sir, on the top right corner it is.

13 Q. The upper right hand corner?

14 A. Yes, sir.

15 Q. All right. What is Government Exhibit No. 2?

16 A. I am sorry. Government Exhibit No. 2 is actually the
17 plea agreement.

18 Q. No. 1 is an information. Government Exhibit No. 2,
19 towards the left top it is entitled plea agreement. Is that
20 correct?

21 A. Yes, sir. And Exhibit No. 3 would be the judgment and
22 commitment on the case.

23 Q. All right. And that is -- The title of it is actually
24 judgment of conviction, sentence, and order to sheriff?

25 A. Correct.

1 Q. And as to these documents, what -- Is there a Defendant's
2 name on each of these documents?

3 A. Yes, sir. In Exhibit No. 1, this says, "The People of
4 the State of Colorado versus Troy Powell." Exhibit No. 2,
5 "The People of the State of Colorado versus Troy Powell." And
6 No. 3 says, "The people of the State of Colorado versus Troy
7 Eugene Powell, Defendant."

8 Q. All right. And what is the name of the county and state
9 that these papers relate to and the cause number?

10 A. It is District Court of Fremont County, Colorado, Cause
11 No. 92-CR-137, Division 2.

12 Q. And that is true of all three of these documents,
13 consistent --

14 A. Yes, sir, it is.

15 Q. Location and cause number?

16 A. That is correct.

17 Q. And in the information, Government Exhibit No. 1, what
18 statute is the statute charged in the information?

19 A. The statute is CRS 18-3-405, sexual assault on a child,
20 class IV felony.

21 Q. And what is the date on that document?

22 A. The date on this document would be the 30th of June,
23 1992.

24 Q. All right. And does the document purport to bear a
25 signature of a judge on the second page?

1 A. On Exhibit No. 1, sir?

2 Q. Yes. Can you see page 2 of Exhibit No. 1?

3 A. I do not see page 2.

4 Q. There is no page 2 on that?

5 A. No, sir.

6 Q. Did you slip it out of the plastic folder?

7 A. Oh, it is on the back. I thought it was attached. Yes,
8 sir, there is page 2, and it is signed by Judge Julie
9 Marshall.

10 Q. All right. And this document, does it bear a fax header
11 with information as to where the fax came from?

12 A. Yes, sir. It says March 29th, 2013, 13:48 hours from
13 Fremont County Courts. Fax number is 719-269-0134.

14 Q. All right. And how did that come into your possession?
15 Did you make a request for it?

16 A. Yes, sir. I think this was actually faxed over to --
17 according to the fax number it got sent to, it looks like it
18 is probably to Gary Heslup with APD probably provided me this
19 with his original stuff.

20 Q. And, again, he is a sex offender registration coordinator
21 for the City of Abilene?

22 A. Yes, sir. That is correct.

23 MR. SUCSY: All right. The Government would offer
24 Government's Exhibit No. 1 at this time.

25 MR. PROPST: Your Honor, I object. Rule 902 of the

1 Federal Rules of Evidence specifies a very clear way that a
2 court record can be entered or it can be authenticated, which
3 is by certification under seal by someone authorized to do so.
4 That has not been done in this case. We object on those
5 grounds.

6 THE COURT: Okay. Objection is overruled.
7 Government's Exhibit No. 1 is admitted.

8 Q. (BY MR. SUCSY) All right. I will direct your attention
9 to Government's Exhibits 2 and 3 and ask if you can identify
10 what they are.

11 A. Yes, sir. Exhibit No. 2 is the plea agreement from The
12 People of the State of Colorado versus Troy Powell, Defendant.
13 Exhibit No. 3 is The People of the State of Colorado versus
14 Troy Eugene Powell, Defendant. It is the judgment,
15 conviction, and sentence order to the sheriff.

16 Q. All right. And I think we have already gone over this,
17 but the state, the county, and the cause number, and the
18 Defendant's name on each of those are the same --

19 A. That is correct.

20 Q. -- between No. 2 and 3 and as well Exhibit No. 1?

21 A. Yes, sir.

22 Q. And on Exhibit No. 3, if you could look at that, do you
23 see this judge's name again?

24 A. Yes, sir. It is Judge Julie G. Marshall.

25 Q. And does that appear to be the same name and signature

1 that appears on Government Exhibit No. 1?

2 A. Yes, sir, it does.

3 Q. And as to Exhibits G-2 and G-3, do they bear a
4 certification that they are accurate copies of the official
5 records of Fremont County, Colorado?

6 A. Yes, sir. They both have the seal on them.

7 Q. And what is the date of the plea agreement? That is
8 Exhibit No. 2.

9 A. The date of the plea agreement was the 25th of September,
10 1992.

11 Q. And the date of the judgment and sentence? And I believe
12 there are two pages there, so you might want to pull that out
13 of the sleeve. They are going to be two different dates. The
14 first page is what date?

15 A. The first page is 11/6 of 1992.

16 Q. All right. And does that page appear to bear that
17 signature of Judge Julie Marshall?

18 A. Yes, sir, it does.

19 Q. And the second page is dated what?

20 A. It is 6/20 of 1997, and it is signed by the same judge as
21 well.

22 Q. All right. Now, these documents appear to be fairly
23 similar, but Exhibit No. 3, does that show that the Defendant
24 originally received a probated sentence in his conviction?

25 A. Yes, sir. He had a probation period for eight years with

1 a term of jail time for 60 days to commence on January 4th,
2 1993.

3 Q. All right. And that was for sexual assault of a child of
4 18-3-405 under Colorado statute?

5 A. Yes, sir. Class IV felony.

6 Q. And then on June 20th of 1997, does it appear that he was
7 remanded to custody of the Department of Corrections for a
8 term of eight years?

9 A. Yes, sir.

10 Q. And that is under the same cause number?

11 A. Correct.

12 Q. And again, that bears Julie Marshall's signature as the
13 judge?

14 A. Yes, sir.

15 MR. SUCSY: The Government offers Government Exhibit
16 No. 2 and 3.

17 MR. PROPST: No objection to No. 2 and 3.

18 THE COURT: Those are admitted.

19 Q. (BY MR. SUCSY) Now, going back to the plea agreement,
20 Government Exhibit No. 2.

21 A. Yes, sir.

22 Q. Does that bear a signature of the Defendant?

23 A. Yes, sir, it does.

24 Q. And under what name?

25 A. Troy Powell.

1 Q. And that is the document that is dated September 25th of
2 1992?

3 A. Yes, sir. That is correct.

4 Q. I will direct your attention now to Government Exhibit
5 No. 5 and ask if you can identify what that is.

6 A. Yes, sir. It is paperwork and information that I
7 received from the Taylor County Clerk's Office.

8 Q. All right. And the second page in particular, what is
9 the title of this document?

10 A. This is a special warranty deed on the property that
11 Mr. Powell had purchased in Tuscola, Texas.

12 MR. SUCSY: The Government offers Government Exhibit
13 No. 5.

14 MR. PROPST: No objection to No. 5.

15 THE COURT: Admitted.

16 Q. (BY MR. SUCSY) And who was the grantee, the person who
17 was receiving ownership under this document?

18 A. Troy Powell.

19 Q. And what is Mr. Powell's address listed on this document?

20 A. 326 County Road 606, Tuscola, Texas, 79562.

21 Q. All right. And the date of the document?

22 A. December 26, 2013.

23 Q. All right. And you have already described this property.
24 Is this the one that you said that he had bought and was
25 remodeling?

1 A. Yes, sir.

2 Q. Now, in the course of your investigation, did you get on
3 the internet to see if you could find Mr. Powell?

4 A. Yes, sir, I did.

5 Q. All right. And did you find a person using the name Troy
6 Powell with circumstances that were consistent with the Troy
7 Powell that you were dealing with in Taylor County, Texas?

8 A. Yes, sir, I did.

9 Q. All right. I will direct you to Government Exhibit No. 8
10 at this time and ask if you can identify what that is. Just
11 leave that one out and we will get to it later. You may need
12 to slip those out. Government Exhibit No. 8 I believe is
13 several pages.

14 A. Okay.

15 Q. And while you are doing that, I will ask you this
16 question. The ones you are holding there, it is a copy that
17 is -- you printed off, and it is rather faint, but as a result
18 the copies of the original you are holding are somewhat
19 illegible.

20 A. Correct.

21 Q. Is that correct?

22 A. Yes, sir.

23 Q. So the one the Judge would have and the one Mr. Propst
24 had and the one that I had to keep, they just couldn't quite
25 maintain all of the data that is on the one that you are

1 holding there. Is that correct?

2 A. Yes, sir. They are screenshots I took off my computer
3 and printed, and I think my printer was low on ink or
4 something.

5 Q. All right. And Mr. Propst was given an opportunity
6 before the hearing, because he expressed difficulty in
7 reading, but he has had an opportunity to look at the one you
8 are looking at there.

9 Okay. Now, my question had been, when you found this
10 individual that was using the name Troy Powell online -- And
11 is this through a particular application online?

12 A. I got this off of Facebook.

13 Q. Okay. And that is a social networking and people can get
14 online and post comments about things that are happening in
15 their lives and whatnot?

16 A. Yes, sir.

17 Q. All right. And this was under a name that you found a
18 person using the name Troy Powell?

19 A. Yes, sir. When I originally had researched Facebook to
20 see if I could find Troy Powell's Facebook account, I think
21 four or five Troy Powells popped up, so I went back and popped
22 in Troy Powell's email address that we had off the
23 registration documents from Illinois, which was
24 troypowell110000@yahoo.com. When I did that only one popped
25 up. And when I researched that particular Facebook account, I

1 could see that it was the same person that I was
2 investigating.

3 Q. All right. So you obtained these records by using this
4 Defendant's email account as reflected on his Illinois
5 paperwork?

6 A. Yes, sir.

7 Q. And we will be getting to that shortly. Does the
8 document purport to reflect dates when various posts or
9 comments were made?

10 A. Yes, sir, it does.

11 Q. Did any of the posts from Mr. Powell include photographs?

12 A. Yes. There were several.

13 Q. And what is depicted in these photographs?

14 A. Most of them are views from outside of the residence at
15 Tuscola where I arrested Mr. Powell.

16 Q. All right. Now, you were there.

17 A. Correct.

18 Q. Are the views that are shown in Exhibit No. 8 consistent
19 with that being Mr. Powell's residence?

20 A. Yes, sir. And there was also one from the inside of the
21 house that showed a cabinet that was there in the kitchen area
22 where we were in the house.

23 Q. And were there any comments posted by the person who was
24 posting these photographs --

25 A. Yes, sir.

1 Q. -- about what was being shown there?

2 A. Yes, sir.

3 Q. All right. And do any of these -- If you could specify
4 which page, but do any of these show a photograph and then a
5 comment from a person under the name of Troy Powell stating
6 what is being depicted?

7 A. Yes, sir. On page 2, the general photograph that looks
8 like this, it says that on January 9th Troy Powell posted one
9 of the views from my house. On page 3, that will show a loaf
10 of bread on a cabinet. That is actually the cabinet that is
11 inside the kitchen area of Troy Powell's house. Page 4 will
12 show the wind turbines and the dark picture.

13 Q. All right. And when you were out there, if you looked a
14 certain direction would you see wind turbines such as those
15 depicted on that page?

16 A. Yes, sir. If my memory serves me correct from being in
17 that area, I think that is the Horse Hollow Wind Turbine
18 Division.

19 Q. Okay.

20 A. I believe page 5 is going to be the one that is clear, a
21 little bit clearer, and it was posted and shows an outlook
22 from that property as well.

23 And then page 6 is a post that appears like that that
24 says, "After 15 years I figured out what I am allergic to.
25 Juniper. Guess what type of forest I live in?" Which the

1 property is surrounded by cedar trees and junipers. That was
2 posted by Troy Powell on January 3rd.

3 Q. January 3rd of 2014?

4 A. Yes, sir. It doesn't have the year on there, but that is
5 the way that Facebook operates. If it is in the current year,
6 it doesn't put the year. If it had been 2013 or 2009, it
7 would have stated that year.

8 Q. All right.

9 MR. SUCSY: The Government offers Government Exhibit
10 No. 8.

11 MR. PROPST: Your Honor, we object on the grounds of
12 authentication, once again. It is a Facebook account, social
13 media site. Simply finding a site that is entitled Troy
14 Powell and shows photographs from Abilene is not sufficient to
15 authenticate that Mr. Powell actually made any statement in
16 here. That is what it is being offered for. My understanding
17 is the statements of the Defendant -- Anybody can log into a
18 Facebook account if they have a password. It can be done from
19 anywhere in the world, and insofar as that we object on
20 grounds of authentication.

21 THE COURT: I will overrule the objection. I think
22 the information testified to by Deputy Marshal Chance
23 sufficiently authenticates the document. The objections go to
24 the weight in terms of who may or may not have made the
25 statements. But he has given sufficient information, the

1 email account, the name, et cetera, that sufficiently
2 authenticates the exhibit.

3 Government's Exhibit No. 8 is admitted.

4 Q. (BY MR. SUCSY) All right. I will direct your attention
5 now to Government's Exhibit No. 6 and 7. And we were talking
6 about an Illinois document that had that
7 troypowell110000@yahoo.com email address. Is this an Illinois
8 sex offender registration form?

9 A. Yes, it is.

10 Q. And what is Exhibit No. 7?

11 A. Exhibit No. 7 is the letter that the State of Illinois
12 mailed to the Defendant that is a notice of expiration of
13 Illinois sex offender registration requirements that advises
14 him under Illinois state law he no longer has a duty to
15 register in that state.

16 Q. All right. Are both of these documents certified as
17 authentic records from the State of Illinois?

18 A. Yes, sir. Exhibit No. 7 is certified as well as Exhibit
19 No. 6.

20 Q. All right. And Exhibit No. 7, that is the letter. It is
21 actually the second -- It is on the second page where it is
22 certified and the letter was sent out?

23 A. Correct.

24 MR. SUCSY: The Government offers 6 and 7.

25 MR. PROPST: No objection to 6 and 7.

1 THE COURT: Admitted.

2 Q. (BY MR. SUCSY) Now, what is the -- Looking at Government
3 Exhibit No. 6, what is the date of that particular
4 registration form? It would appear on the bottom right corner
5 I believe of the front page.

6 A. Yes, sir. It is April 3rd of 2013.

7 Q. All right. And this -- Just for clarification, I think
8 it has been copied on some occasions as a two-page document,
9 but the original was a one-page with print on both sides. Is
10 that correct?

11 A. Yes, sir. That is correct.

12 Q. So the -- And that is is as it appears in the original
13 exhibit before you?

14 A. Yes, sir.

15 Q. Does it purport to bear the signature of the person
16 registering on both the front and back?

17 A. Of the individual who is doing the registration or of the
18 sex offender who is registering?

19 Q. The sex offender who is registering.

20 A. Yes, sir, it does.

21 Q. And what is the full name and the date of birth of the
22 person shown to be registering at this time?

23 A. It just gives Troy E. Powell, date of birth 10/27 of
24 1967.

25 Q. And is that -- In connection with booking Mr. Powell, did

1 you obtain identifiers?

2 A. Yes, sir.

3 Q. And when I am referring to Mr. Powell, I am saying the
4 one who is sitting in the courtroom here?

5 A. Yes, sir. That is correct. When we booked Mr. Powell he
6 gave us the exact same information as well as social security
7 number.

8 Q. Okay. Any other -- There are several, what I would call
9 identifiers here on this document. There is a social security
10 number, there is a date of birth, there is an FBI number.
11 Were those all consistent with the person you were handling
12 yourself?

13 A. Yes, sir. And the FBI number is one of the most valuable
14 numbers that we look for to make sure that we are dealing with
15 the same person since it is linked to fingerprints.

16 Q. All right. And is there a portion of the form right
17 about the middle where it references a date of conviction?

18 A. Yes, sir. The date of conviction was 9/25 of 1992 in
19 Fremont County, Colorado.

20 Q. All right. And is that the exact same date that appears
21 on his plea agreement, Exhibit No. 2 in this case?

22 A. Yes, sir, it is.

23 Q. And the county of conviction is shown as what?

24 A. Fremont.

25 Q. Fremont. And then the state?

1 A. Is Colorado.

2 Q. And is that the place that is referenced in Exhibits 1,
3 2, and 3?

4 A. Yes, it is.

5 Q. And what is the offense that this individual is
6 registering for here?

7 A. Aggravated criminal sexual abuse, 13 to 16, which would
8 be the age of the defendant.

9 Q. Not the age of the defendant.

10 A. I am sorry. The age of the victim.

11 Q. Okay. Now, looking three lines further down, does it
12 show the age of the victim in particular in this case?

13 A. Yes, sir. The age of the victim was 14 years.

14 Q. All right. And right next to that does it show the age
15 of the offender at the time of that offense?

16 A. Yes, sir. The age of the offender at the time of offense
17 was 24 years old.

18 Q. And a couple of lines up from 24, does it show his
19 sentence in that case?

20 A. Yes, sir. It says that he received a sentence of eight
21 years probation/prison.

22 Q. All right. And, in fact, as reflected in Exhibit 1, 2,
23 and 3, that Troy Powell, in fact, received an eight-year
24 probated sentence and then ultimately prison?

25 A. Well, the original conviction was the eight-year probated

1 sentence, and then it was a violation of his probation and he
2 was sent to prison.

3 Q. All right. On the back of this document, and I am still
4 referring to Government Exhibit No. 6, is there a reference to
5 the Adam Walsh Act, Title 18 U.S.C. 2250?

6 A. Yes, sir. About three quarters of the way down in the
7 box.

8 Q. All right. Could you read that short portion?

9 A. Yes, sir. It says, "Under the Adam Walsh Child
10 Protection and Safety Act of 2006, 18 United States Code
11 subsection 2250, if you travel to another state and fail to
12 register as required, you are also subject to federal
13 prosecution that carries penalties of a fine and/or
14 imprisonment up to ten years."

15 Q. All right. Now, directing your attention to what we have
16 referred to as the letter in evidence as Government Exhibit
17 No. 7, I believe you refer to it as a letter notifying him
18 that he did not need to register any longer under the laws of
19 the State of Illinois?

20 A. Yes, sir. That is correct.

21 Q. And what is the date of that letter?

22 A. May 24th of 2013.

23 Q. All right. Even though the letter informs Mr. Powell
24 that he wasn't required to register anymore under Illinois
25 law, does the letter warn him that he still may be required to

1 register as a sex offender if he moves to another state?

2 A. Yes, sir. In the second sentence of the page in the
3 first paragraph, the first paragraph says, "You are no longer
4 required to register under the Illinois Sex Offender
5 Registration Act," and has the title. And it says, "If you
6 move to another state, it is your responsibility to contact
7 law enforcement authorities in that state to verify you are
8 not required to register there. Sex offender registration
9 laws vary from state to state."

10 Q. All right. And you specifically covered that with him
11 when you asked him if he had done that--checked with law
12 enforcement --

13 A. Yes, sir.

14 Q. -- in Texas?

15 A. Yes, sir. That was the main reason I asked him, to see
16 if some law enforcement agency had advised him that he did not
17 have a duty to register.

18 Q. All right. And his answer was that he had not done that?

19 A. That he had not done that; he had researched it himself
20 online.

21 Q. Now, directing your attention to Government's Exhibit
22 No. 10, do you recognize or can you identify what these are?

23 MR. SUCSY: And these are additions to the original
24 exhibit list, Your Honor, and they are not on the original
25 list.

1 THE COURT: Okay.

2 THE WITNESS: Yes, sir. These are all registration
3 documents from the State of Illinois dating all the way back
4 from 2003 all the way up to 2012.

5 Q. (BY MR. SUCSY) All right. So during that time he was
6 registering on an annual basis in Illinois?

7 A. Yes, sir. It appears so.

8 Q. And are these -- I guess you could summarize them by
9 saying they are similar to Government Exhibit No. 7?

10 A. Correct.

11 Q. Government Exhibit No. 7 was the last one that he did?

12 A. Correct. They had originally sent me just the one from
13 2013, and then I requested them to have every single one of
14 them that he had ever signed, because that is important to my
15 investigation is to have that in my files that he was notified
16 of his duties.

17 Q. But these -- The similarities would be things such as the
18 name of the individual, and the offense of conviction being
19 aggravated criminal sexual abuse in Fremont, Colorado, the age
20 of the victim being 14, the age of the offender at the time of
21 the offense being 24, all of those kinds of things just repeat
22 every year that he registered. Is that correct?

23 A. Yes, sir. All of the information as far as that goes is
24 identical, including the FBI number.

25 Q. And are these certified records similar to Government's

1 Exhibit No. 6?

2 A. Yes, sir. They have all been certified as originals.

3 Q. And do these each of these appear to be signed by a
4 person, the registrant person registering as a sex offender,
5 Troy Powell?

6 A. Yes, sir, they do.

7 Q. So we have multiple copies of his signature?

8 A. Yes, sir.

9 Q. And does his signature change a little bit, but basically
10 is it similar over the years?

11 A. Yes, sir. They appear to be a little sloppier around
12 2003 and then more progressed. You can distinguish the Powell
13 a little bit more definite as the years went by.

14 MR. SUCSY: All right. The Government offers
15 Exhibit No. 10.

16 MR. PROPST: No objection to No. 10.

17 THE COURT: Government's No. 10 is admitted.

18 Q. (BY MR. SUCSY) All right. Now, going back to the
19 Defendant's residence in Tuscola that he had bought on
20 December 26th.

21 A. Yes, sir.

22 Q. I am just going to ask you some questions about it.
23 Your observation when you were there, did it appear
24 consistent with him living there or residing there?

25 A. Yes, sir. He had his clothes there, a mattress that he

1 was sleeping there, water was running, electricity.

2 Q. So he had utilities?

3 A. Yes, sir.

4 Q. Any pets there?

5 A. Yes, sir. He had I believe it was two dogs when we were
6 there.

7 Q. Okay.

8 MR. SUCSY: I pass the witness.

9 THE COURT: Mr. Propst?

10 CROSS EXAMINATION

11 By Mr. Propst:

12 Q. Marshal Ferguson, how are you?

13 A. Good. How are you, sir?

14 Q. I am fine, thank you.

15 The documents that you have gone through in Government's
16 Exhibit No. 7, Government's Exhibit No. 10 show that
17 Mr. Powell had registered in the state of Illinois for some
18 10, 11 years?

19 A. Yes, sir.

20 Q. And that Exhibit No. 7 -- Excuse me. Exhibit No. 6 and
21 10 show that?

22 A. I am sorry. Could you ask me that again?

23 Q. Exhibit No. 6 and 10 had shown that he had registered in
24 Illinois for approximately ten years?

25 A. Yes, sir.

1 Q. And Exhibit No. 7 showed that that duty had expired, as
2 far as the State of Illinois was concerned, in 2013?

3 A. That is correct.

4 Q. Okay. And the offense that had caused Mr. Powell to
5 register was from Colorado in 1992?

6 A. That is correct.

7 Q. Okay. That he was -- You said that the victim was 14
8 years old?

9 A. I believe that is what -- Yes, that is what the
10 registration and the JNCs state.

11 Q. And Mr. Powell was 24?

12 A. And he was 24, yes, sir.

13 Q. Mr. Heslup of the Abilene Police Department had contacted
14 you you said the end of November or Thanksgiving break?

15 A. I think it was sometime around there. I believe it was
16 Thanksgiving, and I told him that I was off, but as soon as I
17 got back I would look into it.

18 Q. Okay. And when did you come back to work after that?

19 A. I don't recall. I was probably off three or four days,
20 so I would say the first of December probably sometime.

21 Q. Okay. Somewhere around the first of December.

22 The date that you arrested Mr. Powell, do you remember
23 what day that was?

24 A. That was February 5th of 2014.

25 Q. Okay. So about two months -- a little bit over two

1 months after Mr. Heslup had contacted you.

2 A. Correct.

3 Q. During that time from the end of December -- excuse me.

4 The beginning of December until the beginning of February,
5 were you personally observing Mr. Powell?

6 A. No. The date that I arrested him was the first time that
7 I had any contact with Mr. Powell.

8 Q. Okay. Had you been watching his house?

9 A. No.

10 Q. Had you been looking for vehicles that he drives?

11 A. No, sir.

12 Q. Okay. Had you been doing anything to verify with your
13 own eyes that he was here living in Taylor County, Texas?

14 A. As far as observing him or interviews or --

15 Q. Just with your own eyes, personal observation.

16 A. No, sir.

17 Q. Okay. Were you in contact with family members?

18 A. Yes, sir, I was.

19 Q. Okay. And is it the same family members who -- Are they
20 the same people that made the initial report to Mr. Heslup?

21 A. I don't believe so, sir. I think the report from
22 Mr. Heslup actually was generated through a call from CPS and
23 the school resource officer.

24 Q. Okay. But you don't know who originated -- If CPS got
25 involved, you don't know who originated the complaint with

1 CPS.

2 A. I believe that it was the school counselor and the school
3 resource officer at Abilene High.

4 Q. Okay. And that would have been after they had spoken to
5 Mr. Powell's daughter?

6 A. Yes.

7 Q. Okay. And his daughter lives with her grandmother and
8 her aunt. Is that right?

9 A. To my understanding, yes. That is correct.

10 Q. All right. Whenever you went to the house in -- it was
11 February 5th when you went and arrested Mr. Powell in the
12 Lemons Gap area?

13 A. Yes, sir.

14 Q. The house itself had sparse furnishings, didn't it?

15 A. Correct. It was being remodeled.

16 Q. Okay. And are you aware that Mr. Powell remodels houses
17 for -- as a means of living?

18 A. Not necessarily. I mean, I knew that he did some
19 handyman work and had some rental properties.

20 Q. Okay. I would like to talk about the statement which has
21 been conditionally admitted as Government's Exhibit No. 4.

22 A. Yes, sir.

23 Q. It is typical in a case whenever you interview someone
24 who is in custody that you have a *Miranda* form or a form that
25 has the *Miranda* rights on them that the Defendant would

1 initial off on. Isn't that right?

2 A. It is not in our policy that we have to have a *Miranda*
3 signed. I read his *Miranda* rights to him from a card,
4 witnessed by FBI Agent Michael Edmonston. Our policy doesn't
5 dictate they have to sign a form. I think at the time I
6 looked for it and I didn't have a form in my folder, so I just
7 did it in the presence of a witness.

8 Q. And who was the witness?

9 A. It was FBI agent Michael Edmonston.

10 Q. Okay. But it is the usual thing you do is have a form.

11 A. If I have one. If I have one available, then I will have
12 them sign one.

13 Q. Okay. And did you advise Mr. Powell that he had the
14 right to an attorney?

15 A. Yes, sir. I read it directly off of the *Miranda* card
16 that I carry in my wallet.

17 Q. Okay. But he did not have an attorney present. Right?

18 A. Correct. He did not.

19 Q. And did -- How did he communicate to you that he wanted
20 to waive his *Miranda* rights and speak with you without an
21 attorney?

22 A. After I read him the rights, I asked him if he understood
23 his rights, which even says it on the bottom of this card. I
24 mean, I have got the card if you would like for me to read it.
25 But I asked him if he would like to talk to me. We kind of

1 bantered back and forth, and he said, well, we will wait. And
2 then he said, well. And I said, you don't have to answer any
3 of my questions if you don't want to, or you can answer
4 questions and at any time you can stop. That is completely up
5 to you. And at that time he said, well, you can ask me. And
6 I started asking the questions, and that was pretty much it.

7 Q. And were you in your office here whenever that happened?

8 A. Yes, sir, I was.

9 Q. And was it just you and the FBI agent present along with
10 Mr. Powell or was there anyone else?

11 A. No, it was just myself and Mr. Powell and the FBI agent.

12 Q. Okay. Was he in handcuffs at the time?

13 A. I don't recall. We had brought him up to my office for
14 processing, so I don't recall.

15 Q. And about how long after you had arrested him out in the
16 Lemons Gap area was it that you were questioning him in your
17 office here?

18 A. Well, the interview says I conducted on the 7th and he
19 was arrested on the 5th, so it would be two days.

20 Q. Had he been arraigned at that time?

21 A. He had not been arraigned.

22 MR. PROPST: Your Honor, we would ask for a finding
23 from the Court that the statement -- It has not been shown by
24 the Government that the statement was given voluntarily due to
25 the absence of a written waiver by the client, by the

1 Defendant, the fact that he had no attorney present, and the
2 fact that he had not been arraigned and it was two days after
3 the arrest.

4 THE COURT: All right. I will overrule those
5 objections and find that the statement, based on Deputy
6 Marshal Ferguson's testimony, was voluntarily made.

7 Government's Exhibit No. 4 is admitted, then.

8 Q. (BY MR. PROPST) There was this period of time we just
9 talked about from the beginning of December to the beginning
10 of February when he got arrested and you weren't actually
11 watching him in the sense of doing surveillance, but you were
12 communicating with people who I suppose were telling you that
13 they had an eye on him and could kind of give you a location?

14 A. Yes, sir.

15 Q. And that went on for about two months?

16 A. Off or on. Right now I am in an office by myself
17 covering 13 counties, so it wasn't like I was conducting this
18 investigation every single day for those two months. You
19 know, I may have went a week or two weeks and then got a day
20 that I could actually go out and do something. So I couldn't
21 tell you exactly how much it was in that time. But correct,
22 for about two months the investigation was continuing.

23 Q. Okay. And at no -- By the time -- By early December, you
24 had already come to the conclusion that Mr. Powell was
25 required to register in Texas. Right?

1 A. I don't think that it was that early. It was probably
2 -- Before I got all of my information that he did definitely
3 have a duty to register, it was probably in January sometime,
4 maybe even close to February.

5 Q. Okay. Whenever -- Did you talk directly with his
6 daughter Rebecca?

7 A. Yes, I did.

8 Q. Did you tell her not to tell Mr. Powell that he had a
9 duty to register in Texas and needed to register?

10 A. No, I don't believe I said that. I think I told her that
11 it would be better if she did not say anything about talking
12 to me so that if he had a duty to register he would not flee.

13 Q. Okay. And one of the things that you could have done,
14 you would agree with me, is you could have notified Mr. Powell
15 or just made contact with him and said, hey, are you planning
16 on registering here or not, because if you stay here very much
17 longer then you are going to be in trouble?

18 A. Could have. That is not general policy. The
19 investigation goes on until you find out if they violated the
20 law or not. So, I mean, no, I did not do that. I didn't see
21 a need for that.

22 Q. Did the -- Did his daughter Rebecca, did she indicate to
23 you that he was under the impression that he didn't need to
24 register here?

25 A. No, sir. Actually she gave me the opposite indication.

1 She told me that it was her impression that he knew he was
2 supposed to register --

3 MR. PROPST: I object to hearsay.

4 THE COURT: You asked the question. Go ahead.

5 THE WITNESS: She gave me the impression that he
6 knew he was supposed to register and didn't because a
7 statement she made to me was she had been in a car wreck and
8 she said, and I will quote, dad didn't even want to stay
9 around because he was scared the police were there and he was
10 going to be arrested for not registering, is the statement she
11 made to me.

12 Q. (BY MR. PROPST) Government's Exhibit No. 5 is the deed
13 on the house out in Lemons Gap.

14 A. Yes, sir.

15 Q. It has a date on it of December 26th, I believe?

16 A. Yes, sir.

17 Q. But that is merely the date that the property is
18 transferred in the legal sense, the title is transferred.

19 A. As far as I know. I don't deal with warranties, so I
20 would say it was the date it was filed that it was bought.

21 Q. The date it was filed. It doesn't necessarily reflect a
22 date that Mr. Powell, or anybody else, took physical
23 possession of the house. Right?

24 A. No, sir.

25 MR. PROPST: I will pass the witness, Your Honor.

1 THE COURT: Mr. Sucsy?

2 MR. SUCSY: I have no further questions.

3 The United States calls Tammi Woodall.

4 (Whereupon, the oath was administered by the Court.)

5 MS. WILLIAMS: Your Honor, I don't believe I have
6 filed an official entry of appearance in this case. If I have
7 not done so, I do so at this time.

8 THE COURT: But you are here. Okay.

9 TAMMI WOODALL,

10 Testified on direct examination by Ms. Williams as follows:

11 Q. Please state your name.

12 A. Tammi Woodall.

13 Q. Ms. Woodall, where do you live?

14 A. 2642 Minter Lane, Abilene, Texas.

15 Q. How long have you lived there?

16 A. Almost two years.

17 Q. How long have you lived in the Abilene area?

18 A. I have been here almost eight years.

19 Q. Do you work outside the home?

20 A. Yes, ma'am.

21 Q. What do you do?

22 A. I am a housekeeper at Super 8.

23 Q. At Super 8?

24 A. Yes, ma'am.

25 Q. Who else lives with you at that Minter Lane address?

1 A. My niece Rebecca Johnson, Cody James, and Amy Johnson,
2 and Betty Johnson.

3 Q. And all of those people that live with you, how are they
4 related, if at all, to you?

5 A. Rebecca, Amy, and Cody are my niece and nephew, and Betty
6 Johnson is my mother.

7 Q. Do you know a person by the name of Troy Powell?

8 A. Yes, I do.

9 Q. Is he in the courtroom today?

10 A. Yes.

11 Q. Would you please point him out for us?

12 You are pointing to the man in the orange jumpsuit to my
13 right?

14 A. Yes, sir.

15 MS. WILLIAMS: May the record reflect she has
16 identified the Defendant.

17 THE COURT: It may do so.

18 Q. (BY MS. WILLIAMS) How do you know Mr. Powell?

19 A. I know him because I have been raising Rebecca Johnson.

20 Q. And who is Rebecca Johnson in relation to Mr. Powell?

21 A. His daughter.

22 Q. How long have you been raising Rebecca?

23 A. I have had her for four years.

24 Q. Is -- Because he is Rebecca's father, I mean, when did
25 you first meet Mr. Powell?

1 A. When Becca was first born.

2 Q. Okay. How old is she now?

3 A. She is 17.

4 Q. Now, she was born to whom?

5 A. Tina James and Troy Powell.

6 Q. And Tina James is your --

7 A. Sister.

8 Q. Your sister?

9 A. Yes, ma'am.

10 Q. How old was your sister when Rebecca was born?

11 A. I don't recall, ma'am; young, very young.

12 Q. Over 18?

13 A. No.

14 Q. Over 16?

15 A. By a few months. I am not sure.

16 Q. By a few months over 16?

17 A. Yes.

18 Q. What is the age difference between you and Rebecca's mom?

19 A. About nine months. Nine years. Sorry.

20 Q. Did you know that Troy Powell was convicted of a sexual
21 offense?

22 A. Yes, ma'am.

23 Q. How did you know that?

24 A. My mother had mentioned it to me a long time ago.

25 MR. PROPST: Object to hearsay.

1 THE COURT: Overruled.

2 Q. (BY MS. WILLIAMS) And that sex offense, does it relate
3 to a family member of yours?

4 A. Yes.

5 Q. Up until a few months ago, where did you know or
6 understand that Mr. Powell had been living?

7 A. In Illinois.

8 Q. How did you know he was living there?

9 A. I had visited one time to see my mother and he was living
10 in Illinois.

11 Q. At some time did you learn that he had moved here to
12 Abilene?

13 A. No.

14 Q. Okay. When did you next -- When did you see him last?

15 A. Before the end of November? Is that what you are asking
16 me?

17 Q. I am asking, yes, around the Thanksgiving time did you
18 see Mr. Powell?

19 A. I am not understanding what you are asking me, ma'am.

20 Q. Before court today, when was the last time you saw
21 Mr. Powell?

22 A. A few weeks before he got arrested.

23 Q. And if he was arrested on February the 5th of this year,
24 about when was it that you would have seen him here in
25 Abilene?

1 A. End of November.

2 Q. The end of November of 2013?

3 A. Yes, ma'am.

4 Q. Okay. If Thanksgiving day was on November the 28th, do
5 you remember when in relation to that day you would have seen
6 Mr. Powell?

7 A. I don't recall the date. He showed up at my house to
8 deliver a TV to Rebecca, and that is when he showed up.

9 Q. Did you know he was coming to your house?

10 A. No, ma'am, I did not.

11 Q. How long had it been since you had seen him when he just
12 showed up at your house with a TV?

13 A. At least a year.

14 Q. Where had you seen him, then, that year before? Where
15 had you seen him?

16 A. August. It was in Illinois.

17 Q. And then he showed up at your house sometime after
18 Thanksgiving with a TV for Rebecca?

19 A. Yes, ma'am.

20 Q. Was it after Thanksgiving and before Christmas?

21 A. Yes.

22 Q. Did you and Mr. Powell talk when he showed up with the
23 TV?

24 A. Honestly, no, ma'am, because I was getting the children
25 ready for school and then I was on my way to work that

1 morning.

2 Q. At some point after he showed up with the TV, did you
3 talk to him?

4 A. Not really sat down and talked. I was under the
5 impression that he was dropping the TV off and leaving. I
6 wasn't aware of his plans.

7 Q. At some point did you become aware of his plans?

8 A. When he purchased the house in Tuscola and his truck HAD
9 been registered here, I was under the assumption he was moving
10 here.

11 Q. When did you learn that he had purchased that house in
12 Tuscola?

13 A. Shortly before he purchased he said he was looking at it,
14 but he wasn't -- He didn't know if he was going to get it yet.

15 Q. He told you that?

16 A. Yes, ma'am.

17 Q. All right. So when he got to Abilene and he came to your
18 house on Minter Lane, was that sometime around the last week
19 of November?

20 A. I don't recall the date, but I am thinking it was the
21 last weekend of November.

22 Q. Did he stay at your house?

23 A. Yes, for three or four days.

24 Q. All right. And you saw him during that time?

25 A. Yes, ma'am.

1 Q. After he left your house, where did you understand that
2 he went?

3 A. I was under the impression he went to Clyde and stayed at
4 my ex-husband's house.

5 Q. And did you learn that from Mr. Powell?

6 A. Yes, and my sister Tina had said that they were out
7 there.

8 MR. PROPST: Object to hearsay.

9 THE COURT: Sustained on that.

10 Q. (BY MS. WILLIAMS) When he left your house, did he tell
11 you he was going to Clyde to stay with your ex-husband?

12 A. No, ma'am. I didn't know where he was going.

13 Q. Do you know about how long he stayed in Clyde?

14 A. I was under the impression three or four days.

15 Q. And after that, where did you learn that he went?

16 A. He had rented a motel on Highway 80 for about a week.

17 Q. How did you know that?

18 A. My sister Tina.

19 Q. Okay.

20 MR. PROPST: Object to hearsay.

21 THE COURT: She hadn't -- Okay. All right.
22 Overruled.

23 Q. (BY MS. WILLIAMS) After he rented the motel room on
24 Highway 80, did you become aware that your sister was staying
25 at the motel with him?

1 A. Yes, ma'am.

2 Q. Do you know about how long they stayed at the motel?

3 A. For a week, I assume.

4 Q. And then after that, did you become aware that he was in
5 the process or trying to buy that house in Tuscola?

6 A. Yes, ma'am.

7 Q. And did you learn that he did buy that house in Tuscola?

8 A. Yes, ma'am. He said he got it.

9 Q. He told you that?

10 A. Yes, ma'am.

11 Q. Did you go out to that house?

12 A. Yes, ma'am.

13 Q. And when you went out there, did he tell you that he was
14 staying there? Did he tell you he was staying somewhere else?

15 A. I assumed he was staying there because all his belongings
16 were there.

17 Q. And his belongings would include what?

18 A. His clothes, his tools, his truck, his animals.

19 Q. And when you say animals, what kind of animals are we
20 talking about?

21 A. I don't know the breeds of them, but there was two.

22 Q. Dogs?

23 A. Yes, ma'am.

24 Q. All right. Were they his pets?

25 A. Yes, ma'am.

1 Q. Do you remember about when it was that he moved to that
2 house in Tuscola?

3 A. I don't recall dates, but it was fairly quick after he
4 purchased it.

5 Q. If he purchased the house on December the 26th, would it
6 have been fairly quickly after that?

7 A. Maybe two or three days after that.

8 Q. Sometime around the first of January?

9 A. Yes, ma'am.

10 Q. Because you have family relations with Mr. Powell, after
11 he moved into that house there in Tuscola, do you think you
12 would be aware of whether he had moved back to Illinois or
13 somewhere else?

14 A. No, ma'am.

15 Q. You don't think you would know that?

16 A. Well, yes, ma'am. I am sorry.

17 Q. You would know that?

18 A. Yes, ma'am.

19 Q. Okay. And did you ever become aware that he had moved
20 from that house in Tuscola to anywhere else before he was
21 arrested on February the 5th?

22 A. No, ma'am.

23 Q. After Mr. Powell was arrested, did he call you from jail?

24 A. Yes, ma'am.

25 Q. Has he called you numerous times from jail?

1 A. Yes, ma'am.

2 Q. And has he asked you to do things for him that he can't
3 do for himself?

4 A. Yes, ma'am.

5 Q. What kind of things has he asked you to do?

6 A. Pay bills for him.

7 Q. What happened to the dogs at his house there in Tuscola?

8 A. The day he got arrested, he called and he asked me to go
9 get them.

10 Q. And why go get the dogs?

11 A. Because there was nobody up there and he didn't want them
12 left there alone with no food or water.

13 Q. You have been in the courtroom this morning and heard the
14 testimony of Deputy United States Marshal Ferguson?

15 A. Yes, ma'am.

16 Q. Did you hear him testify concerning what the Defendant
17 told him about where all he stayed after he got to Texas?

18 A. Yes, ma'am.

19 Q. You heard the deputy testify that the Defendant said that
20 he stayed in his truck, a hotel, 2642 Minter Lane, Nick's
21 house in Clyde, and then moved to 326 County Road 606.

22 A. Yes, ma'am.

23 Q. And is that consistent with what you knew about where the
24 Defendant had been since he arrived in Texas?

25 A. Yes, ma'am, other than the truck. I wasn't aware that he

1 was sleeping in his truck.

2 Q. And the truck, tell us about the truck. Did he come in
3 the truck from Illinois?

4 A. Yes, ma'am.

5 Q. In what state was the truck registered when he got here?

6 A. Illinois.

7 Q. All right. And did you become aware at some point that
8 it had different license plates on it?

9 A. Yes, ma'am.

10 Q. What license plates did it have on it the last time you
11 saw it?

12 A. Up to this point?

13 Q. Yes, ma'am.

14 A. It is Texas.

15 Q. Registered in the state of Texas?

16 A. Yes, ma'am.

17 Q. Did you have any indication that Mr. Powell was just
18 passing through Texas on his way to somewhere else?

19 A. I thought he was up until he registered his truck and
20 purchased a home.

21 Q. Do you have any reason to be untruthful or to dislike
22 Mr. Powell?

23 A. Other than what he has done to Rebecca, no, ma'am.

24 Q. All right. Knowing what he has done to Rebecca, which we
25 haven't gotten into here, but knowing what he has done to

1 Rebecca, is that causing you to lie today?

2 A. No, ma'am.

3 MS. WILLIAMS: I will pass the witness.

4 THE COURT: Mr. Propst?

5 CROSS EXAMINATION

6 By Mr. Propst:

7 Q. Hello, Ms. Woodall.

8 A. Hi.

9 Q. I am Jeff Propst. I am Mr. Powell's attorney. We have
10 spoken on the phone, haven't we?

11 A. Yes, sir.

12 Q. The house out there on County Road 606, what was your
13 understanding of what was going to happen to that house?

14 A. We had -- Troy Powell and I had discussed about me living
15 there with the kids.

16 Q. Okay. When you say the kids, you are talking about his
17 daughter?

18 A. His daughter and the other two siblings, yes.

19 Q. Okay. And those other siblings are not his siblings.
20 Right?

21 A. No.

22 Q. But you actually have legal custody of Rebecca his
23 daughter. Right?

24 A. I have guardianship.

25 Q. Guardianship?

1 A. Yes.

2 Q. She is 17?

3 A. Yes.

4 Q. Okay. And your understanding was that that house was
5 being prepared for you and for Rebecca and the other two
6 children?

7 A. At first I didn't, but as we discussed it and I looked at
8 it, yes, I was under that assumption, yes.

9 Q. Okay. You said that Mr. Powell stayed with you for about
10 three or four days?

11 A. Yes, sir.

12 Q. And then you have also testified that he stayed at a
13 motel and he stayed with your ex-husband and out at County
14 Road 606. How often did you see -- How frequently did you see
15 Mr. Powell during this period?

16 A. Sometimes everyday, sometimes every other day.

17 Q. Okay. Were you going to his -- wherever he was staying,
18 or was he coming to where you were staying?

19 A. He was coming to my residence.

20 Q. Okay. And what would he do when he was there?

21 A. He would hang out and visit and be on his computer and
22 come visit Becca.

23 Q. Okay. Were you giving updates to Marshal Ferguson about
24 where Mr. Powell was?

25 A. No, sir.

1 Q. Okay. Now, you know that Mr. Powell has property in
2 other states.

3 A. Yes, sir.

4 Q. He has a house in Missouri?

5 A. Yes, sir.

6 Q. He has a house or some rental properties in Illinois?

7 A. Yes, sir.

8 Q. The house in Missouri, when did he acquire that?

9 A. I don't know the dates. I just -- I really don't know
10 much about the Missouri property.

11 Q. Okay. Is that something that you think he acquired
12 recently or within the last few months or years ago, or do you
13 have any sense of that?

14 A. No, sir, I don't.

15 Q. Okay.

16 MR. PROPST: I will pass the witness.

17 THE COURT: Ms. Williams?

18 REDIRECT EXAMINATION

19 By Ms. Williams:

20 Q. Ms. Woodall, did I understand your testimony to be during
21 cross examination that you have seen Mr. Powell in and around
22 the Abilene area everyday or every other day?

23 A. When he was first here, yes, ma'am.

24 Q. When he was first here. So like when he got here the end
25 of November, the first part of December?

1 A. Yes, ma'am.

2 Q. And how long did that go on?

3 A. I would say about a month, guessing.

4 Q. Has anyone told you -- Let me back up. Before Mr. Powell
5 was arrested, did anyone tell you how many days he would have
6 in any place or in Texas before he would have to register as a
7 sex offender?

8 A. No, ma'am.

9 MS. WILLIAMS: No further questions.

10 THE COURT: Mr. Propst?

11 RE CROSS EXAMINATION

12 By Mr. Propst:

13 Q. You said that it was about a month that you saw him
14 either everyday or every other day, and then after that what I
15 guess I am understanding you to say that you didn't see him as
16 frequently after about a month had passed?

17 A. No, sir. He was up at Tuscola working on the house, I
18 assumed.

19 Q. Okay. And as far as -- You said it was about a month.
20 Are you sure it was a month?

21 A. Might have been two, I mean, because after I got a job in
22 December I didn't see him as often. So if he came to the
23 house, my mother was there.

24 Q. Okay. But what you had testified to a little bit ago is
25 that for about a month you saw him either everyday or every

1 other day. Right?

2 A. It was probably up until he got arrested off and on from
3 in that time frame.

4 Q. Okay. Well, Ms. Woodall, and I am not trying to be
5 difficult, but now I think what I have heard you say is that
6 you saw him everyday or every other day for about a month.

7 A. From November up until he got arrested. It wasn't that I
8 seen him on a daily basis, but yes, I have had contact with
9 him, because he has called me from jail since he has got
10 arrested.

11 Q. Okay. We are not talking about after he went to jail. I
12 am talking about before he went to jail. Okay?

13 A. I seen him sometimes everyday, sometimes every other day,
14 and like I said, when I got a job in December I really didn't
15 see him that much.

16 Q. So you didn't see him every other day whenever you had
17 that job in December?

18 A. No, sir.

19 Q. Okay.

20 A. And if I did, it was for a brief moment.

21 Q. When did you get that job in December?

22 A. I got hired December 4th.

23 Q. Okay.

24 MR. PROPST: No further questions.

25 THE COURT: Ms. Williams?

1 MS. WILLIAMS: Nothing further, Your Honor.

2 THE COURT: Ms. Woodall, you may step down. Thank
3 you.

4 MR. SUCSY: Your Honor, other than asking the Court
5 to take judicial notice of the laws, and I do have some
6 printouts of federal law as well as Colorado and some Texas
7 material, which I provided to Defense counsel, and subject to
8 argument, the Government would rest at this time.

9 THE COURT: Okay. Any objection -- Have you
10 provided counsel what you are asking the Court to take
11 judicial notice of?

12 MR. SUCSY: I have given him copies of the same
13 materials that I have here for the Court.

14 THE COURT: All right.

15 MR. PROPST: I have copies, Your Honor. I would
16 address the material briefly.

17 THE COURT: Yes.

18 MR. PROPST: As far as the -- There is some
19 printouts of 42 U.S.C. 16911 and the sequencing after that,
20 which we don't have any objection to you taking judicial
21 notice of.

22 There is some printouts of Colorado statutes of the -- I
23 believe it is 18-3-405, which is the statute reflected in the
24 judgment in Exhibit 3. We don't have any objection to the
25 Court taking judicial notice of that.

1 As far as the two documents referring to Texas law, one
2 of them is a -- There is a three-page document -- Excuse me.
3 Four pages that purports to show what they call substantial
4 similarity between the Texas offense, which would require
5 registration as a sex offender under Texas state law, and
6 Colorado offenses that the Department of Public Safety is
7 saying or is alleging here that those are substantially
8 similar.

9 We will not stipulate or acquiesce in the Court taking
10 judicial notice that these determinations are correct by the
11 Department of Public Safety. Those are matters of law that I
12 believe the Court would have to decide, and I can address
13 that. I think we do actually have some significant difference
14 between the Colorado statute of 18-3-405 and the Texas statute
15 of 21.11(a)(1), indecency with a child by contact. And I can
16 address that in argument, but I just object to the Court
17 taking judicial notice of that.

18 The other document from Texas is simply a -- As I
19 understand it, it is simply a list of durations of time that a
20 person would have to register if convicted of particular Texas
21 offenses. I don't dispute those. I don't have any objection
22 to the Court taking judicial notice of them; only to the
23 document that attempts to show that the Colorado statute is
24 substantially similar to the Texas statute of indecency by
25 contact.

1 THE COURT: Mr. Sucsy?

2 MR. SUCSY: Your Honor, those are available for the
3 Court. I would have to tell the Court that really I am
4 relying on federal law, primarily the first part of what I
5 have given the Court. It is based on the elements of the
6 Colorado offense and how those are defined and evaluated as to
7 whether they constitute under the Adam Walsh Act under 18,
8 U.S.C. 2250, 42 U.S.C. 16911, the definition of a tier two sex
9 offender, what constitutes a sex offense, really that is what
10 we are relying on here, Your Honor. The Texas provisions are
11 relevant possibly to what the Defendant might have found if he
12 had been looking online and researching as there is some
13 evidence that what he said he had done. But those -- We are
14 not relying on the Texas statutes to establish the fact that
15 his Colorado conviction constitutes a sex offense requiring
16 him to register under federal law.

17 THE COURT: All right. I will take judicial notice,
18 then, of these items that the Government has requested that
19 the Court take judicial notice.

20 And with that you are resting?

21 MR. SUCSY: Yes, Your Honor.

22 THE COURT: Mr. Propst?

23 MR. PROPST: Your Honor, we would ask for a judgment
24 of acquittal under Federal Rule of Criminal Procedure 29, and
25 I am basing that motion on the proposition to the Court that

1 the requirement to register under SORNA, the violation of
2 2250 -- 18 U.S.C. 2250 happens only if a person, in this case,
3 in the case of a state offense, crosses state lines, comes to
4 Texas in this case, and is required to register under Texas
5 law. SORNA, as I understand it, is a directive or a request
6 to the states to implement certain standards, and at the -- If
7 the state doesn't do it they are denied funding. But,
8 nevertheless, many states don't do it, and Texas is one of
9 those, which is apparent from reading the Texas rules of
10 registration and comparing them to the federal rules of
11 registration. It is also acknowledged on the SMART website
12 which is put out by the Department of Justice regarding sex
13 offender registration.

14 When a state is not in compliance with SORNA, then the
15 best that a person can do when it comes to the state and has
16 any duty to register is register under the laws of the State
17 of Texas, and that is addressed briefly in the case of *United*
18 *States versus Heth*, a Fifth Circuit case which is 596 F.3d
19 255. The argument in *Heth* was that Mr. Heth argued that it
20 was impossible for him to comply with SORNA because Texas
21 hasn't implemented SORNA. The Fifth Circuit rejected that
22 argument. And that is not the argument I am making here
23 today. But what they said in rejecting it was Mr. Heth knew
24 that he had to register under at least under state law and
25 Texas has a registration system under state law and he could

1 have registered under state law. So, in other words, it
2 wasn't impossible for Mr. Heth to comply with SORNA just
3 because Texas hasn't implemented it. He had to register under
4 Texas laws, and essentially do whatever was available to him,
5 which he didn't do.

6 In light of that language from *Heth*, my argument is that
7 the Court -- the Fifth Circuit is directing the Court's
8 attention to Texas law, or to whatever state law it is, if a
9 person comes there in order for that person to be liable under
10 SORNA, liable under 2250, the Government would have to show
11 beyond a reasonable doubt that the Defendant had a duty to
12 register in the state of Texas. It has been addressed very
13 briefly, and the Government has asked the Court to take
14 judicial notice of a document issued by the Department of
15 Public Safety that purports to show a substantial similarity
16 between the Colorado offense that Mr. Powell was convicted of
17 in 1992 and the Texas offense of indecency with a child by
18 contact. But part of the other documentation that was
19 provided to the Court just now and that the Court took
20 judicial notice of is the -- expanding on the law the Colorado
21 statute of 18-3-405, which says that a person who subjects
22 another, not his spouse, to any sexual contact commits sexual
23 assault. That is 18-3-405. That is the one that is reflected
24 in Exhibit No. 3, the judgment from Colorado.

25 Another document just submitted is the definitions under

1 those sections of the Colorado statutes, "Sexual contact means
2 the knowing touching" -- And this is in 18-3-401, definition
3 4. "Sexual contacts means the knowing touching of the
4 victim's intimate parts by the actor," And it goes on to say
5 more. And then intimate parts is defined in No. 2. "Intimate
6 parts means the external genitalia or the perineum or the anus
7 or the buttocks or the pubes"--their words--"or the breasts of
8 any person."

9 I would -- The emphasis there that I would like to put is
10 the fact that that statute criminalizes conduct and makes
11 certain conduct registerable for sex offenses that Texas does
12 not so criminalize. I would bring to the Court's attention
13 two Texas cases. One of them is *Wright v. State*, which is 693
14 S.W.2d 734, 1985 case from Dallas where the very specific
15 argument there was the Defendant was accused of touching the
16 buttocks of the victim. He was charged with indecency by
17 contact, which is the Texas statute that the Government is
18 trying to show that the Colorado statute is analogous to, and
19 the Dallas Court of Appeals said that the statute of indecency
20 by contact does not -- is not committed by touching the
21 buttocks. There is a difference between anus and buttocks.

22 Furthermore, the Texas -- it is a Court of appeals case
23 from Austin, the Third Court of Appeals in Austin, 327 S.W.3d
24 898, and that case is styled *Texas Department of Public Safety*
25 *versus Garcia*. In that case it was being litigated whether or

1 not a statute from another jurisdiction was substantially
2 similar to a Texas statute for the purposes of sex offender
3 registration. And what the Court of Appeals said was that if
4 there is incongruity between the statutes as they are written,
5 that the Government would have to show that the offense
6 committed, the original offense committed, is -- based on its
7 facts falls under the Texas statute.

8 I appreciate the Court bearing with me. I understand
9 that this is a long and winding argument.

10 The point, what I am saying is, there is a difference
11 that calls into question -- between the statutes of Colorado
12 and Texas calls into question whether or not Mr. Powell would
13 have a duty to register in the state of Texas. The Government
14 has not met its burden and produced sufficient evidence to
15 show that that is the case, that he has a duty to register in
16 Texas.

17 I think that Mr. Sucsy is relying primarily on the
18 registration requirements in 18 U.S.C. -- or 42 U.S.C. 16913,
19 but those are only suggested minimum requirements that SORNA
20 is making to the states. The actual substance of violating
21 2250 when we are talking about someone coming to Texas is they
22 would have to not be in compliance with Texas registration
23 law, and that is what the evidence that the Government has
24 introduced is insufficient to show.

25 For those reasons, we would show for a judgment of

1 acquittal under Rule 29.

2 THE COURT: Thank you.

3 Mr. Sucsy?

4 MR. SUCSY: This is an interesting argument, because
5 in the *Lopez-Parker* case that is now up on appeal, the
6 argument is being made the other direction there might have
7 been error in that case based on any consideration of Texas
8 law; that it only needs to be -- all of the definitions, the
9 residency definitions, everything has to be determined under
10 federal law. At least that is the argument.

11 Now, in this particular case we are relying on federal
12 law, and the statute, the last one that Mr. Propst referred
13 to, is entitled "Registry Requirements for Sex Offenders."
14 And it says, "In general, sex offenders shall register and
15 keep the registration current in each jurisdiction where the
16 offender resides, where the offender is an employee, and where
17 the offender is a student." So I don't see how that is
18 conditioned, and that is the federal statute.

19 There is also, incidentally, before I forget, part of the
20 definition in 18, U.S.C. -- or 42 U.S.C. 16911 that defines
21 employment, and it was brought out by the Defendant that he
22 might have been employed in remodeling the residence or the
23 church that he had bought. The definition includes, "The term
24 'employee' includes an individual who was self-employed or
25 works for any other entity, whether compensated or not." So

1 in addition to residing here, presumably Mr. Powell was
2 employed in remodeling the residence or the church that he had
3 purchased.

4 But we can -- Without resorting to Texas law, there is
5 federal law from the beginning to the end of this case. The
6 Defendant was convicted in Fremont County, Colorado of sexual
7 assault of a child, or on a child, as they term it, a class IV
8 felony, in violation of CRS 18-3-405, and the conviction was
9 pursuant to a plea agreement dated 9/25/92, although it was
10 later in the year than it was actually -- the judgment and the
11 sentence were entered. His obligation, as I will show
12 shortly, will not expire until 2017. We are not there yet.

13 The elements of the offense are stated on the last page
14 of the plea agreement. "The Defendant in the state of
15 Colorado, on or about the date or place charged, knowingly
16 subjected another, not his spouse, to any sexual contact, and
17 the person was less than 15 years of age"--in this case his
18 victim was 14--"and the Defendant was at the time at least
19 four years older than that person at the time of the act"--in
20 this case the Defendant was ten years older.

21 "Under Colorado law, sexual contact means the knowing
22 touching of the victim's intimate parts by the actor, or the
23 actor's intimate parts by the victim, or the knowing touching
24 of the clothing covering the immediate area of the victim or
25 actor's intimate parts, if that sexual contact was for the

1 purpose of sexual arousal, gratification, or abuse."

2 And intimate parts is defined under Colorado law to mean,
3 "The external genitalia or the perineum or the anus or the
4 buttocks or the pubes or breasts of any person."

5 And the statute that Mr. Powell was convicted of tracks
6 the same elements that are set out in his plea agreement.
7 "Any actor knowingly subjects another, not his or her spouse,
8 to any sexual contact, commits sexual assault on a child if
9 the victim is less than 15 years of age and the actor is at
10 least four years older than the victim."

11 So the Court must look to federal law to determine if
12 Mr. Powell's Colorado -- I don't know that the Court
13 necessarily has to look to federal law, but the Court can look
14 to federal law in this case and determine if the Colorado
15 conviction constitutes a sex offense within the definition of
16 federal law requiring him to register as a sex offender under
17 the Sex Offender Registration and Notification Act.

18 And in that regard, Title 42 U.S.C. 16911 has relevant
19 definitions, the federal definitions. "A sex offender means
20 an individual convicted of a sex offense. 16911 Subsection
21 (5) defines sex offense in the Amie Zyla expansion of sex
22 offense definition, it says, "generally, except as limited by
23 subparagraph (B) or (C)"--and neither of which apply in this
24 case because (B) deals with foreign convictions and (C) deals
25 with victims who were not at least four years younger than the

1 Defendant--based on that law, "sex offense means a criminal
2 offense that has an element involving a sexual act or sexual
3 contact with another."

4 And for the purposes of that Subsection (i) Section III
5 states, "Tier II sex offender"--and that is what this
6 Defendant is--a Tier II sex offender--"means a sex offender
7 other than a Tier III sex offender whose offense is punishable
8 by imprisonment for more than one year and the offense is
9 comparable or more severe than the following offenses when
10 committed against a minor, or an attempt or conspiracy to
11 commit such an offense against a minor." Abuse of sexual
12 contact is under Subsection (4) as described in Section 2244
13 of Title 18. So we are still just going under federal law.

14 Going to 18 U.S.C. 2244, it is titled, "Abuse of Sexual
15 Contact." To define what that would have to be, the statute
16 says, "Sexual conduct in circumstances where sexual acts are
17 punished by this chapter, whoever in the special maritime and
18 territorial jurisdiction of the United States, or in a federal
19 prison, or in any prison institution or facility in which
20 persons are held in custody by direction or pursuant to a
21 contract or agreement with that of any federal department or
22 agency, knowingly engages in or causes sexual contact with or
23 by another person, if so to do would violate Subsection (a) of
24 Section 2243 of this title, had the sexual contact been a
25 sexual act."

1 So it is sort of -- You have to go from one statute to
2 the other, but now we go to 2243(a), because we are looking at
3 sexual contact, not a sexual act. And that is titled, "Sexual
4 abuse of a minor or ward." And it says, "Whoever, in the
5 special maritime or territorial jurisdiction of the United
6 States or in federal prison, or in any federal prison,
7 institution, or facilities in which persons are held in
8 custody by direction of or pursuant to or a contract or
9 agreement with the head of any federal department or agency,
10 knowingly engages in a sexual act with another person." The
11 statute uses the term sexual act, but 2244 said we replaced
12 that with the concept of sexual contact here "with the person
13 who has attained the age of 12 but has not attained the age of
14 16.

15 And so what we are looking for is something that is
16 substantially similar to this scenario--sexual contact and a
17 victim who has attained the age of 12 but not 16--and that is
18 exactly what we have the Defendant convicted of in the
19 Colorado case--and is at least four years younger than the
20 person so engaging. And here we have a Colorado situation
21 with -- the language in that regard four years is identical,
22 and that the -- There is an escape provision under the federal
23 law, SORNA, of the victim being less than four years.

24 Under the Texas statute, it just requires that they be at
25 least three years younger, so there are situations where you

1 could have a federal or a state conviction which would not
2 constitute a SORNA sex offense. That is not the case with the
3 Colorado law and the circumstances we have here. Obviously
4 this Defendant was ten years older than the victim.

5 And then 18 U.S.C. 2246 (3) defines--and now we are
6 looking at the federal definition; not the Texas definition,
7 but the federal definition for purposes of applying these
8 federal statutes--defines sexual contact. And we have the two
9 categories--sexual act or sexual contact. "Sexual contact
10 means"--and this is 2246 Subsection (3)--"means the
11 intentional touching, either directly or through the clothing
12 of the genitalia, ANUS, groin, breast, inner thigh, or
13 buttocks," which is what Defense was arguing is not included
14 in the Texas law. It is included in the federal law that is
15 substantially similar to the Colorado statute. "Or the
16 buttocks of any person with intent to abuse, humiliate,
17 harass, or arouse and gratify the sexual desire of any
18 person."

19 So based on this road map, it is quite clear that the
20 Colorado statute that Mr. Powell was convicted of is
21 comparable to the offense referenced in 18 U.S.C. 2244, which,
22 in turn, refers to the 18 U.S.C. 2243(a) dealing with sexual
23 contact of minors between the ages of 12 through 15, or 12
24 through 16 in the case of the federal statute.

25 And finally, federal law requires persons convicted of

1 such sex offenses and were, thereby, Tier II sex offenders,
2 per federal law, to register for a period of 25 years. And
3 that is in one of the -- in the laws that I provided the
4 Court. And so the 25 years obligation has not expired. The
5 Defendant was here very clearly even, just by -- I mean, we
6 have danced around it, but going back, the other witnesses who
7 say he was here from the end of November until he was arrested
8 in February, and that is well over 30 days. And on top of
9 that, his -- under federal law he has three days once he
10 becomes a resident, when he buys a house and starts living
11 there, I say he has three days to register. He bought that
12 house on the 26th of December of 2013, and he was arrested on
13 the 4th or 5th of February of 2014. He had gone well over
14 three days.

15 And there is a general definition in some of the
16 footnotes that I am sure the Court is aware of that in some
17 federal context the habitually residing can refer to a 30-day
18 period. But in this case he bought a house and was very
19 clearly a resident and had three days from that point. But
20 even going by the 30-day definition, he was here well over 30
21 days. And in his own statement, he was living in his truck,
22 he was living on Minter, he was living all these different
23 places, Clyde. All of these are here. He was habitually
24 living here from -- based on his own statement, from the
25 middle of December, second week in December, making it the

1 shortest time, until the very first part of February. That is
2 well over 30 days.

3 So however the analysis is conducted, however you look at
4 it, he lived here long enough as a resident, and possibly
5 apparently as an employee for himself working in remodeling a
6 house that he had bought, long enough to require him to
7 register under federal law.

8 That is all I have, Your Honor.

9 THE COURT: Okay. Thank you.

10 Did you have any evidence you intended to present?

11 MR. PROPST: No, Your Honor. We rest.

12 THE COURT: Okay. All right. And you close?

13 MR. SUCSY: Your Honor, I close. And I apologize if
14 I went beyond what was -- responding to his Rule 29.

15 THE COURT: I gathered we were already there after
16 listening to Mr. Propst.

17 MR. SUCSY: That is all I have in the way of
18 argument as well, Your Honor.

19 THE COURT: Anything else you wanted to add as far
20 as the argument, Mr. Propst?

21 MR. PROPST: Briefly, Your Honor, we would ask for a
22 ruling on the motion.

23 THE COURT: I deny the Rule 29 motion.

24 MR. PROPST: And I think the evidence -- Mr. Sucsy
25 has said that he was working here and remodeling. I think the

1 evidence from the witness stand was that Mr. Powell was
2 preparing that house for Ms. Woodall and his daughter to live
3 in. I am not sure that meets the definition of employment as
4 far as SORNA is concerned.

5 And, furthermore, not to belabor the point, but all of
6 the things that the Government has quoted from the definitions
7 of the statutes from federal law, that would be relevant,
8 maybe even dispositive, if Texas was compliant with SORNA.
9 The fact that Texas is not compliant with SORNA forces us to
10 turn, with the guidance of the *Heth* opinion from the Fifth
11 Circuit, forces us to turn to Texas law.

12 And I am not asking the Court to decide that Mr. Powell
13 wasn't required under Texas law. My point is the Government
14 has the burden of proof and the Government didn't produce
15 sufficient evidence to persuade the Court that Mr. Powell had
16 a duty to register under Texas law, because of the difference
17 in the statutes and because of Texas case law on the matter.
18 Without proving that, they have not proven that he violated
19 2250.

20 THE COURT: Thank you.

21 Anything else, then, Mr. Sucsy?

22 MR. SUCSY: No, Your Honor.

23 THE COURT: Well, let me take a look at what you
24 have cited, the cases that you have cited and the statutes,
25 and we will come back after lunch and I will give you a ruling

1 on the case. Why don't we be back at 2:30, and give me a
2 chance -- take the lunch break and then give me a chance to
3 read what the parties have cited here. And we will be back at
4 2:30.

5 (Lunch recess.)

6 THE COURT: Be seated.

7 Mr. Propst, what is your argument -- If I understand your
8 argument correctly, you are saying the Government -- In order
9 to obtain a conviction in this case, the Government has to
10 prove that your client Mr. Powell was required to register
11 under Texas law?

12 MR. PROPST: Yes, sir.

13 THE COURT: And what is the basis for that argument?

14 MR. PROPST: The basis for that is primarily from
15 *United States V. Heth*, which -- it is dicta. I don't know --
16 It is not the main point of the opinion, but it follows from
17 that opinion that if a state hasn't complied with SORNA, such
18 as Texas, then the Defendant can only register in that state
19 under the laws provided, and the laws -- Therefore, you would
20 look to Texas law to see if he was required to register here,
21 in which case, you know, if he was required and didn't
22 register, he would be guilty of 2250, but if he is not
23 required to register --

24 THE COURT: But they didn't address that issue in
25 *Heth* at all whether he was required to register first. The

1 conviction was under SORNA in that case, as I understand it.

2 Correct?

3 MR. PROPST: It was.

4 THE COURT: And there was no requirement there that,
5 in fact, there had to be a showing by the Government that he
6 had to register under Texas law before they could obtain a
7 conviction under SORNA.

8 MR. PROPST: Well, they didn't address that
9 directly. *Heth's* argument was that he can't comply with SORNA
10 in Texas because they haven't implemented it, and the court
11 said, no, we reject that argument. What you could do, even if
12 they haven't implemented, what you can do is you can comply
13 with the Texas registration laws. And that is my basis from
14 that that the rest of my argument follows. They even cited
15 the Texas Code of Criminal Procedure, Chapter 62, saying this
16 is what you could have done--complied under that. And
17 everything else that I say follows from that--the idea that he
18 has to comply under Texas law because that is the only thing
19 available in Texas.

20 THE COURT: Okay.

21 Mr. Sucsy?

22 MR. SUCSY: Looking at the opinion, I mean, I don't
23 see that the argument is addressed at all. I don't see how it
24 supports --

25 THE COURT: I don't see it either.

1 MR. SUCSY: There is even a statement in here citing
2 *Whaley*, a case actually out of Lubbock, but it says, "Noting
3 that all states and the District of Columbia had sex offender
4 registration laws prior to SORNA," and it is beyond dispute
5 that Colorado had a sex offender registry. Texas also has a
6 sex offender registry. And so, I mean, it is even
7 acknowledged in these opinions. I don't really understand how
8 the argument can be made that we have an obligation to show
9 this Court at this hearing that it was possible for this
10 Defendant to register. I don't think the issue has been
11 raised that it is impossible.

12 THE COURT: Well, one of the issues there that they
13 raised -- they state twice in there that the fact that the
14 state hasn't implemented SORNA does not mean that you can't
15 violate SORNA. You still have to comply with SORNA even if
16 the state hasn't implemented it. They state that at least
17 twice in the opinion. I just don't see -- I was trying to
18 find where you were getting there.

19 I understand your argument, but I don't see that case
20 lending any support for that. Any other place where you were
21 getting support for that argument?

22 MR. PROPST: Well, just in the text of SORNA itself
23 in 42 U.S.C. 16913 starting with -- Just one moment, Your
24 Honor. Actually 42 U.S.C. 16911 defines the sex offender
25 registry, "The term sex offender registry means a registry of

1 sex offenders and a notification program." Then definition
2 (10) is "Jurisdictions. A jurisdiction means a state," and
3 several other things. And 42 U.S.C. 16912 says -- is where
4 the SORNA is commanding, or I guess requesting at the threat
5 of withholding funding, that states maintain a registry. It
6 says, "Each jurisdiction shall maintain a jurisdiction-wide
7 sex offender registry conforming to the requirements of the
8 subchapter."

9 THE COURT: And how does that get you where you are
10 going?

11 MR. PROPST: Whenever they talk about the registry,
12 maintaining the registry, and the defendant's duty to maintain
13 the registry and to keep it current, when they refer to the
14 registry they are referring to the local registry, and the
15 local registry is governed by the local laws, and that is why
16 the Government has to show that he is required to register
17 under Texas law. He can't have violated 2250 --

18 THE COURT: That provision that you reading, that is
19 the provision where SORNA is trying to mandate to the states
20 with the threat of withholding federal funds to implement
21 SORNA. But, again, I don't find from that language -- Because
22 in that *Heth* case they stated even if the state hasn't done,
23 that you still can be in violation of SORNA whether they have
24 done that or not. I don't see that being support for the
25 argument where you are going that the Government has to prove

1 that Mr. Powell, or anyone else, has to register under Texas
2 law before they can be found guilty for a violation of SORNA.
3 I don't see that that follows.

4 All right. Anything else?

5 MR. PROPST: No, Your Honor.

6 THE COURT: Okay. Well, I have considered the cases
7 you have cited. As I have stated, I don't believe that they
8 lend support for the argument you are making that the
9 Government has to show that Mr. Powell had to have registered,
10 or even that he didn't qualify to be registered, as you are
11 arguing, because of the difference in Colorado law versus the
12 Texas law in terms of the indecency with the child and it
13 doesn't have quite the same definition. Of course, the
14 statute talks about substantial as the civil cases, state
15 civil cases you cited point out. I just don't think that is
16 an issue for this case. I think the Government, as Mr. Sucsy
17 has been arguing, is going directly under SORNA. They are
18 entitled to do that. They have standing for that proposition.

19 On that basis, I think they have sustained their burden
20 in this case, the Government. I am going to find the
21 Government has shown Mr. Powell was, in fact, living here,
22 intending to reside here in Taylor County, Texas, Northern
23 District of Texas, and that he failed to register within 30
24 days as required, and so he violated the provisions of 2250 as
25 alleged in the indictment.

1 Mr. Powell, I will find you guilty, then, on the offense
2 alleged in Count 1 of the indictment for failure to register.

3 Anything else we need to address?

4 MR. PROPST: No, Your Honor.

5 THE COURT: Mr. Sucsy, anything else we need to
6 address?

7 MR. SUCSY: No, Your Honor.

8 THE COURT: We will issue a sentencing scheduling
9 order. Likely we are looking at sometime in August or early
10 September as far as when the PSR will be ready and I will be
11 back. But we will issue a scheduling order with the dates on
12 there.

13 Okay. Court is adjourned.

14 (The proceedings were concluded at 2:40 p.m.)

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1 I HEREBY CERTIFY THAT THE FOREGOING IS A
2 CORRECT TRANSCRIPT FROM THE RECORD OF
3 PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.
4 I FURTHER CERTIFY THAT THE TRANSCRIPT FEES
5 FORMAT COMPLY WITH THOSE PRESCRIBED BY THE
6 COURT AND THE JUDICIAL CONFERENCE OF THE
7 UNITED STATES.

8
9 S/Shawn McRoberts 10/23/2014

10 _____DATE_____
11 SHAWN McROBERTS, RMR, CRR
12 FEDERAL OFFICIAL COURT REPORTER
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